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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 CHARLES M. NOBLE,

9 Petitioner,

10 v.
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12 PATRICK GLEBE,

13 Respondent.
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NO: CV-09-111-RMP

ORDER GRANTING PETITIONER'S
MOTION TO LIFT STAY, CANCEL
HEARING AND SET A BRIEFING
SCHEDULE

15 Before the Court is Petitioner's Motion For Order to Lift Stay, Cancel
16 Hearing, and Proceed to Consideration of Amended Habeas Petition (Ct. Rec. 20).
17 Respondent has filed a response agreeing with the motion (Ct. Rec. 21). Petitioner
18 is Charles Michael Noble, a prisoner proceeding *pro se*. The Attorney General of
19 Washington represents the Respondent.
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22 **BACKGROUND**
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24 On July 10, 2002, Petitioner entered a guilty plea to five counts of Indecent
25 Liberties and received a sentence of 87 months on each count to run consecutively
26 (Ct. Rec. 12-2 at 23). In August of 2002, the Department of Corrections wrote the
27 parties and the court, asking that the sentence be amended to include a period of
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1 community custody as required by state law (Ct. Rec. 18 at 5). No action was
2 taken. The Department of Corrections wrote again in February 2009, again asking
3 that the sentence be amended.
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5 In July of 2009, Petitioner filed an Amended Petition (Ct. Rec. 7). The
6 Court ordered service on Respondent (Ct. Rec. 9). Respondent moved to Dismiss
7 claiming the petition was time-bared by 28 U.S.C. § 2244(d) (Ct. Rec. 12). In
8 response, Petitioner filed a Motion for Order to Stay Proceedings requesting a stay
9 until Petitioner's sentence was amended (Ct. Rec. 18 at 3).
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12 Petitioner's sentence was amended in January 2010 (Ct. Rec. 20 at 5), and
13 Petitioner requested that the Court lift the stay (Ct. Rec. 20 at 1). Petitioner argues
14 that since his sentence was amended, the Respondent's statute of limitations
15 argument, in its motion to dismiss, is moot because the finality of the previous
16 judgment was destroyed. *State v. Harrison*, 148 Wn.2d 550, 561 (2003).
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18 Accordingly, Petitioner wants Respondent to answer the habeas motion.
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21 Respondent agrees that the Court should lift the stay, cancel the hearing on
22 the pending motion to dismiss, and set a briefing schedule for Respondent's answer
23 (Ct. Rec. 21 at 2; Ct. Rec. 20 at 3). Accordingly,
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25 IT IS ORDERED that:

- 26 1. Petitioner's Motion to Lift Stay (**Ct. Rec. 20**) is **GRANTED**.
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2. Respondent is ordered to answer Petitioner's § 2254 Motion within 45 days of this Order.
3. Petitioner shall serve and file a reply, if any, within 30 days of service of Respondent's answer.
4. All other pending motions, if any, are **DENIED AS MOOT**.
5. The District Court Executive is directed to:
 - a. File this Order;
 - b. Send copies to counsel; and
 - c. Set a hearing on Petitioner's § 28 U.S.C. § 2254 Motion, without oral argument, for **December 27 2010**.

DATED this 21st day of September, 2010.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Court Judge